UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,994	07/24/2001	Joseph H. Berkovitz	101.957.124	5234

23483 7590 04/07/2006	EXAMINER
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BOSTON, MA 02109	3639	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/911,994	BERKOVITZ ET AL.
	Examiner	Art Unit	
	Rutao Wu	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>19 January 2006</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-39</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-39</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Status of Claims

1.   In response filed January 19, 2006 the applicant amended claims 1, 12-15, 20-

26, 31, 34, 37 and added new claims 38 and 39. No claims have been cancelled.

Response to Arguments

2.   Applicant's arguments, see page 1, filed January 19, 2006, with respect to 35

U.S.C. §101 have been fully considered and are persuasive. The 35 U.S.C. §101 of

claims 1-15, 20-24, 25-33 has been withdrawn.

3.   Applicants' arguments filed January 19, 2006, with respect to 35 U.S.C. §102(b)

have been fully considered but they are not persuasive.

Applicants amended claim 1 to disclose:

A computer system for dynamic pricing of at least one item in an order

comprising:

At least one static calculator for making price modifications to the order that are

not conditional; and

At least one dynamic calculator for making price modifications to the order based

upon conditional rules.

The applicants argue that Maritzen et al does not meet the above limitations.

The Examiner respectively disagrees.

Maritzen et al disclose calculations based on tax rates or other fees based on fee rules that may apply to an order. (col 8: lines 12-20)   Thus teaching the dynamic calculator for making price modifications to the order based upon conditional rules.

Also, based on Fig 3 of Maritzen et al's disclosure it shows the price paid by a buyer for an order. It is inherent from Fig 3 and col 8: lines 12-20 that there is a calculator that totals the price of the product with applicable taxes or other appropriate charges to arrive at the final price that a buyer must pay for the product since it is a norm in commerce that the buyer pays any applicable taxes and appropriate fees such as shipping fees when placing an order for products. The calculator that calculates the final price of an order is a static calculator because it is not based on any conditional rules and simply just adds up all the costs to an order.

As per claims 21, 23, 24 and 25, the applicants' argue that Maritzen et al does not teach determining an initial price on the at least one item in the order.

Maritzen et al disclose in col 8: line 15-16 that tax fees or other fee are calculated by multiplying the rate times the purchase price in the transaction. It is inherent from the disclosure that an initial price of the product must have been determined before the transaction took place, otherwise Maritzen et al's invention would not be able to calculate tax fees or other fees because the purchase price would not been known if an initial price was not established.

4.   Claims 18, 29, 30 and 32 stand rejected under 35 U.S.C. §103(a) due to the rejection of the independent claims.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1-17, 19-28, 31, 33 and 34-37 are rejected under 35 U.S.C. 102(b) as

being anticipated by U.S. Pat No. 5,987,429 to Maritzen et al.

Referring to claim 1:

A computer system for dynamic pricing of at least one item in an order

comprising:

At least one static calculator for making price modifications to the order that are

not conditional; and (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig 3;

arguments supra)

At least one dynamic calculator for making price modifications to the order based

upon conditional rules. (col 2: lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8:

lines 13-17; arguments supra)

Referring to claim 2:

The computer system of claim 1 wherein the at least one static calculator

comprises a pre-calculator that determines an initial price. (col 5: line 28; col 8: lines 13-

17)

Referring to claim 3:

The computer system of claim 1 wherein the at least one static calculator

comprises a post-processing calculator that adjusts a determined price according to a

price generating algorithm. (Fig 3; col 8: lines 12-20)

Referring to claim 4:

The computer system of claim 1 wherein the at least one dynamic calculator

further comprises a qualifier and a discount calculator. (col 1: lines 63-67; col 6: lines

53-54; col 7: lines 8-12)

Referring to claim 5:

The computer system of claim 4 wherein the qualifier applies rules to determine if

an item is qualified to receive a discount. (col 1: lines 63-65; col 7: lines 7-11)

Referring to claim 6:

The computer system of claim 5 wherein the rules comprise a condition that must

be satisfied for an item to qualify for the discount. (col 6: lines 59-66; col 7: lines 15-22)

Referring to claim 7:

The computer system of claim 5 wherein the rules comprise a condition that must

be satisfied for an item to qualify for the discount and a target upon which to apply the

discount. (col 6: lines 59-66)

Referring to claim 8:

The computer system of claim 5 wherein the discount calculator applies a

discount to an item that is determined to be qualified to receive a discount. (col 6: lines

53-54; col 8: lines 13-17)

Referring to claim 9:

The computer system of claim 1 wherein the static calculators further comprise a pre-calculator that determines an initial price and a post-processing calculator that adjusts a determined price according to a price generation algorithm; and (col 2: lines 3-5; col 5: lines 28-29; col 8: lines 13-17, 41-42)

The at least one dynamic calculator further comprises a qualifier and a discount calculator. (col 1: lines 63-67; col 6: lines 53-54; col 7: lines 8-12)

Referring to claim 10:

The computer system of claim 1 wherein the at least one static calculator and the at least one dynamic calculator make up a pricing engine. (col 2: lines 1-5)

Referring to claim 11:

The computer system of claim 10 further comprising a plurality of pricing engines. (col 2: lines 57-59)

Referring to claim 12:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates a price for a particular item. (col 5: line 28; col 8: lines 13-17)

Referring to claim 13:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates a shipping price of a particular item. (col 8: lines 17-20)

Referring to claim 14:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates an applicable tax amount for a particular item. (col 6: lines 53-54; col 8: lines 13-17)

Referring to claim 15:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates an amount comprising a price for all items in an order, shipping costs and applicable taxes for the order. (col 2: lines 3-5, col 8: lines 41-42)

Referring to claim 16:

The computer system of claim 10 wherein the pricing engine is connected to a network for determining prices of items for sale over the network. (col 3: lines 9-12)

Referring to claim 17:

The computer system of claim16 wherein the network is the Internet. (col 3: lines 9-12)

Referring to claim 19:

The computer system of claim 16 wherein the network is telephone-based. (col 4: lines 16-18)

Referring to claim 20:

A system for dynamic pricing of at least one item in an order comprising:

At least one static calculator for making price modifications to the order that are not conditional; (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig 3; arguments supra)

At least one dynamic calculator for making price modifications to the order based upon conditional rules, (col 2: lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8: lines 13-17; arguments supra)

Wherein the dynamic calculator further comprises a qualifier and a discount

calculator. (col 1: lines 63-67; col 6: lines 53-54; col 7: lines 8-12)

Referring to claim 21:

A system for dynamic pricing of at least one item in an order comprising:

At least one static calculator for making price modifications to the order that are

not conditional; (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig 3;

arguments supra)

At least one dynamic calculator for making price modifications to the order based

upon conditional rules, (col 2: lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8:

lines 13-17; arguments supra)

Wherein the at least one static calculator comprises at least one pre-calculator

that determines an initial price. (col 5: lines 28; col 8: lines 13-17; arguments supra)

Referring to claim 22:

A system for dynamic pricing of at least one item in an order comprising:

At least one static calculator for making price modifications to the order that are

not conditional; and (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig 3;

arguments supra)

At least one dynamic calculator for making price modifications to the order based

upon conditional rules, (col 2: lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8:

lines 13-17; arguments supra)

Wherein the at least one static calculator comprises at least one post-processing calculator that performs final adjustments to a price based upon a price generation algorithm. (Fig 3; col 8: lines 12-20; arguments supra)

Referring to claim 23:

A system for dynamic pricing of at least one item in an order comprising:

At least two static calculator for making price modifications to the order that are not conditional; and (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig 3; arguments supra)

At least one dynamic calculator for making price modifications to the order based upon conditional rules, (col 2: lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8: lines 13-17; arguments supra)

Wherein the static calculators further comprise a pre-calculator that determines an initial price and a post-processing calculator that adjusts a determined price according to a price generation algorithm; (col 2: lines 3-5; col 5: lines 28-29; col 8: lines 13-17, 41-42; Fig 3) and

The at least on dynamic calculator further comprises a qualifier and a discount calculator. (col 1: lines 63-67; col 6: lines 53-54; col 7: lines 8-12)

Referring to claim 24:

A computer system for dynamic pricing of at least one item in an order comprising:

A module for determining an initial price on at least one item in the order; (col 5: lines 28; col 8: lines 13-17; arguments supra) and

At least one dynamic calculator for modifying the initial price on the at least one

item in the order based upon conditional rules. (col 2: lines 49-54; col 6: lines 53-54; col

7: lines 11-12; col 8: lines 13-17)

Referring to claim 25:

A method of performing dynamic pricing on at least one item in an order

comprising the steps of:

determining an initial price on the at least one item in the order; (col 5: lines 28;

col 8: lines 13-17; arguments supra)

Performing one or more dynamic price calculations on the at least one item in the

order based upon one or more conditional rules, (col 2: lines 49-54; col 6: lines 53-54;

col 7: lines 11-12; col 8: lines 13-17)

Wherein these two pricing steps yield price information for the at least one item in

the order. (Fig 3; col 8: lines 12-20)

Referring to claim 26:

A method of performing dynamic pricing on at least one item in an order

comprising the steps of:

Performing one or more static price calculations on the at least one item in the

order that are not conditional; and (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20,

41-42; Fig 3; arguments supra)

Performing one or more dynamic price calculations on the at least one item in the

order based upon one or more conditional rules, (col 2: lines 49-54; col 6: lines 53-54;

col 7: lines 11-12; col 8: lines 13-17)

Wherein these two price calculation steps yield price information for the at least

one item in the order. (Fig 3; col 8: lines 12-20)

Referring to claim 27:

The method of claim 26 further comprising the step of utilizing elements of a

price environment to perform the calculations. (col 5: lines 26-61)

Referring to claim 28:

The method of claim 26 further comprising outputting price information after the

calculations are complete. (col 4: lines 1-2, 5-7)

Referring to claim 31:

A method of allowing a user to create rules for dynamic pricing of at least one

item in an order comprising the steps of:

Providing at least one static calculator for making price modifications to the order

that are not conditional; (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig

3; see arguments supra)

Providing at least one dynamic calculator for making price modifications to the

order based upon conditional rules; and (col 2: lines 49-54; col 6: lines 53-54; col 7:

lines 11-12; col 8: lines 13-17)

Providing a user interface that allows a user to input at least one conditional rule.

(col 6: lines 26-27)

Referring to claim 33:

The method of claim 32 further comprising a step of transforming the rule to an

executable format. (col 6: lines 35-36)

Referring to claim 34:

A computer program product, residing on a computer-readable medium, for

dynamic pricing of at least one item in an order, the computer program product

comprising instructions for causing a computer to:

determine an initial price on the at least one item in the order; and (col 5: lines

28; col 8: lines 13-17; arguments supra)

Perform dynamic price calculations on the at least one item in the order, (col 2:

lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8: lines 13-17)

Wherein these instructions yield price information for the at least one item in the

order. (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 41-42)

Referring to claim 35:

The computer program product of claim 34 wherein the computer-readable

medium includes a magnetic disk. (col 3: lines 66-67; col 4: line 1)

Referring to claim 36:

The computer program product of claim 34 wherein the computer-readable

medium includes an optical disk. (col 3: line 67; col 4: line 1)

Referring to claim 37:

A computer program product, residing on a computer-readable medium, for

dynamic pricing of at least one item in an order, the computer program product

comprising instructions for causing a computer to:

Perform static price calculations on the at least one item in the order that are not

conditional; and (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 12-20, 41-42; Fig 3;

arguments supra)

Perform dynamic price calculations on the at least in the order one item based

upon conditional rules, (col 2: lines 49-54; col 6: lines 53-54; col 7: lines 11-12; col 8:

lines 13-17)

Wherein these instructions yield price information for the at least one item in the

order. (col 2: lines 3-5; col 7: lines 28-29; col 8: lines 41-42)

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 18, 32, 38 and 39 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Maritzen et al.

As per claim 18, Maritzen does not explicitly state that his invention network is a

wireless network. The Examiner submits, however, that it would have been obvious to

one having ordinary skill in the art to include transaction on a wireless network.

Maritzen provides specific motivation by indication that as other commercial

communication networks are developed, the invention may be applied as well to

transactions on those networks. (col 3: lines 12-15)

As per claim 32, Maritzen does not explicitly states that the rules or stored in a database field in text format. However, official notice is taken that it is not new and well known to store database fields in text format such as XML.

As per claims 38 and 39, Maritzen et al disclose in Fig 3 a buyer purchasing items. Maritzen et al also disclose that Operation 105 then computes specific tax fees or specific other fees for each transaction object. (col 7: lines 10-13) Therefore, it is obvious that an order can contain one or more items.

3.   Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maritzen et al in view of U.S. Pat No. 4,351,033 to Uchimura et al.

As per claim 29, Maritzen does not disclose storing the calculation history with the one or more rules used to calculate the price. Uchimura discloses that the conditional data concerning how package will be shipped are stored in memory areas. (col 16 lines 2-10) Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maritzen's invention to include a calculation history which also include the conditional rules used to calculate the price. One would be motivate to perform such modification to record the transaction history to facilitate future calculations with the same conditional rules.

As per claim 30, Maritzen does not disclose the price calculation history may be used to recalculate a price in the future. Uchimura discloses that when dealing with multiple parcels of the same way of mail and destined to the same region with the setting of the postal condition data of the first postal parcel, then the postal charge calculation can be simply obtained by merely measuring the weight for each parcel. (col

16: lines 11-20) Therefore, it would have been obvious to one having ordinary skill in

the art at the time the invention was made to modify Maritzen's invention to include a

price calculation history and use the history to recalculate price in the future. One would

be motivated to perform such modification to reduce the number of calculation needed

for items if the rules applied are the same.

Conclusion

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.
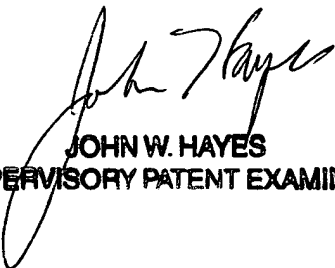

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Rutao Wu whose telephone number is (571)272-3136.

The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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rw

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER